

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

**In the Matter of**

<b>Provision of Directory Listing Information</b>	)	
<b>Under the Communications Act of 1934,</b>	)	<b>CC Docket No. 99-273</b>
<b>as Amended</b>	)	
	)	
<b>The Use of N11 Codes and Other</b>	)	<b>CC Docket No. 92-105</b>
<b>Abbreviated Dialing Arrangements</b>	)	
	)	
<b>Administration of the North American</b>	)	<b>CC Docket No. 92-237</b>
<b>Numbering Plan</b>	)	

**Comments of the  
New Jersey  
Division of the Ratepayer Advocate**

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March 18, 2002

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**Comments of the  
New Jersey  
Division of the Ratepayer Advocate**

**To the Commission:**

The New Jersey Division of the Ratepayer Advocate (“Ratepayer Advocate”) hereby files these Comments in response to the Notice of Proposed Rulemaking (“NPRM”) issued January 9, 2002, in the above-referenced proceeding. In these Comments, the Ratepayer Advocate supports presubscription for Directory Assistance (“DA”) services, and requests the Commission to reserve to the States those regulatory matters involving DA that have traditionally been regulated by the States. Pursuant to paragraph 80 of the NPRM, these Comments address specifically sections III.C.1 and III.D.5, 6 of the NPRM.

The Ratepayer Advocate is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and

industrial entities. The Ratepayer Advocate participates in proceedings of the New Jersey Board of Public Utilities (“NJBPU”) (and in State and Federal administrative and judicial proceedings), but is not subject to the control or supervision of the NJBPU, and exercises its litigation and appeal functions accordingly.<sup>1</sup>

The regulatory status of DA in New Jersey is the matter of a current and ongoing remand proceeding. In September 1999, the NJBPU approved a petition of Bell Atlantic-New Jersey n/k/a Verizon New Jersey and, reclassified DA as a competitive service.<sup>2</sup> In July 2001, the Superior Court of New Jersey, Appellate Division, remanded the matter to the NJBPU on grounds that the NJBPU reclassification was procedurally defective.<sup>3</sup> Although the Appellate Division did not vacate the

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<sup>1</sup>/ New Jersey Reorganization Plan 001-1994, codified at N.J.S.A. 13:1D-1, et seq.

<sup>2</sup>/ I/M/O Filing by Bell Atlantic-New Jersey, Inc., for the Reclassification of Existing Rate Regulated Services - Directory Assistance Services as Competitive Services: Telecommunications Order of Approval, Docket No. TT97120889, New Jersey Board of Public Utilities (Sep. 14, 1999).

<sup>3</sup>/ I/M/O the Application of Bell Atlantic-New Jersey, Inc. for Approval of an Extension of its Plan for an Alternative Form of Regulation, I/M/O Filing by Bell Atlantic-New Jersey, Inc., for the Reclassification of Existing Rate Regulated Services - Directory Assistance Services as Competitive Services: Telecommunications Order of Approval, 342 N.J.Super. 439, 776 A.2d 926 (2001).

1999 Order, the Court did demand reconsideration of the matter and the implementation of such remedy as warranted.<sup>4</sup>

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<sup>4</sup>/ Id., 342 N.J.Super. at 455, 776 A.2d at 935.

In prefiled testimony submitted to the NJBPU in the remand proceeding, the Ratepayer Advocate cited the incumbent carrier's control of the 411 code as a barrier to entry in the New Jersey DA market, and a deterrent to the development of a competitive market. Citing Section 251(b)(3) of the Telecommunications Act,<sup>5</sup> the Ratepayer Advocate stated that the use of alternative dialing arrangements for DA, such as "00," "10-10-XXXX" or a toll-free number, while the incumbent local exchange carrier ("ILEC") retains control of 411 for DA violates the dialing parity provision of the Act. The Act defines dialing parity as the ability of

. . . a person that is not an affiliate of a local exchange carrier . . . to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation . . .<sup>6</sup>

The Ratepayer Advocate further stated its opinion that under applicable State law, a New Jersey ILEC would be required to unbundle 411 access and make it available under tariff to competing providers of telecommunications services if DA were to be declared a competitive service.

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<sup>5</sup>/ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as "the Act," and citations to sections of the Act will be to the Act as it is codified in the United States Code.

<sup>6</sup>/ 47 U.S.C. § 153(15).

As the Commission noted in the NPRM, it has stated previously that DA is “a necessary element of a competitive local telecommunications market.”<sup>7</sup> The Ratepayer Advocate supports the proposition that competition in the DA market contributes to enhanced competition in the local exchange market. It is the opinion of the Ratepayer Advocate that the proliferation of competing providers of telecommunications services and services that are adjunct to telecommunications services will provide consumers with a greater range of services from a larger number of providers. Locally, the New Jersey Legislature has declared that it is the policy of the State to provide diversity in the supply of telecommunications services, and has found that competition will “promote efficiency, reduce regulatory delay . . . foster productivity and innovation,”<sup>8</sup> and “produce a wider selection of services at competitive market-based prices.”<sup>9</sup>

Dialing parity was mandated by New Jersey when IntraLATA toll presubscription was implemented by the State; at that time, all parties but one agreed that 10XXX access did not constitute effective competition.<sup>10</sup> It is the opinion of the Ratepayer Advocate that consumers’ need to utilize access codes or dialing arrangements other than 411 would discourage development of a competitive DA market. The Ratepayer Advocate, however, notes that it is sensitive to the

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<sup>7</sup>/ NPRM at ¶ 12, and adjacent note.

<sup>8</sup>/ N.J.S.A. 48:2-21.16(a)(4).

<sup>9</sup>/ N.J.S.A. 48:2-21.16(b)(1), (3).

<sup>10</sup>/ I/M/O the Investigation of IntraLATA Toll Competition for Telecommunications Services on a Presubscription Basis: Order Approving Presubscription and Proposal of Rules, Docket No. TX94090388, New Jersey Board of Public Utilities, at 8 (Dec. 14, 1995). New Jersey also directed that 2-PIC dialing be supported in order to afford consumers a choice of different IntraLATA and InterLATA toll services providers.

technological considerations that 411 presubscription might impose, and would therefore support the use of 411XX, or similar arrangement, if the technical and economic data support such implementation. The Ratepayer Advocate makes this recommendation in light of national familiarity with 411 as the dialing pattern for access to DA across the Nation.

Notwithstanding its support for DA presubscription, the Ratepayer Advocate supports, to the extent technically and economically feasible, State implementation of these measures, as well as continued State regulation of DA service issues, including quality of service, service for disabled persons, and free provision of DA with local exchange service, as may be applicable. Although the Commission arguably has the authority to enter into the regulatory arena of certain intrastate service issues,<sup>11</sup> the Ratepayer Advocate submits that DA service quality is a matter that has traditionally been handled by State authorities, and which should remain within such local jurisdiction. As an adjunct to basic local service, the service quality issues are best addressed at the State level.

WHEREFORE, and for the reasons set forth herein, the Ratepayer Advocate supports presubscription to 411 as a means toward increasing competition in the DA market, but recommends State implementation, as well as continued State oversight of service quality issues.

Respectfully submitted,

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By: s/ Joshua H. Seidemann

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<sup>11</sup>/ See AT&T Corp., et. al., v. Iowa Utilities Board, et.al., 525 U.S.366, 381, 119 S.Ct. 721, 731 (1999).

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